



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-9996-N4]

Early Retiree Reinsurance Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth termination dates for several processes under the Early Retiree Reinsurance Program (ERRP) in preparation for the January 1, 2014 program sunset date. These operational processes, which involve plan sponsors and other parties, include: the submission of changes to information in a plan sponsor's ERRP application; the reporting of plan sponsor change of ownership; the submission of reimbursement requests; the reporting and correction of data inaccuracies; and the request for reopenings of reimbursement determinations.

EFFECTIVE DATE: This notice is effective [OFR--insert date of public inspection at the **Federal Register**].

FOR FURTHER INFORMATION CONTACT: David Mlawsky, (410)786-6851.

SUPPLEMENTARY INFORMATION:

I. Background

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010, and the Health Care and Education Reconciliation Act of 2010 (Reconciliation Act) (Pub. L. 111–152) was enacted on March 30, 2010. These laws are collectively referred to as “Affordable Care Act.” Section 1102 of the Affordable Care Act directs the Secretary of Health and Human Services (HHS) to establish the temporary Early Retiree Reinsurance Program (ERRP) to provide reimbursement to eligible sponsors of employment-based plans for a portion of the costs of providing health coverage to early retirees (and eligible spouses, surviving

spouses, and dependents of such retirees), during the period beginning on the date on which the program is established, and ending on January 1, 2014 (the ERRP sunset date). Section 1102(a)(l) of the Affordable Care Act required the Secretary to establish the program within 90 days of enactment of the law (by June 21, 2010). Section 1102(e) of the Affordable Care Act appropriates funding of \$5 billion for the temporary program.

In the May 5, 2010 **Federal Register** (75 FR 24450), we published an interim final regulation with comment period, implementing the program as of June 1, 2010. Subsequently, we published several guidance documents that further detailed program requirements and operations in various sections of the rule (see the Regulations and Guidance section and the Common Questions section on the ERRP public website at www.errp.gov). Collectively, the regulations and guidance set forth various requirements and processes associated with participation in the ERRP. These requirements and processes include mandatory activities, such as how to report and correct previously submitted data inaccuracies, as well as elective activities, such as requesting a reopening of a reimbursement determination.

Several of these requirements and processes require access to the ERRP Secure Website. The ERRP Secure Website is used by plan sponsors to complete several important operations, such as submitting corrections to data inaccuracies and requesting reimbursement. As part of ending the program, we are planning for the ERRP Secure Website to eventually be taken offline and archived and to conclude the remaining operational processes.

This notice sets forth the termination dates for several operational processes, including those that involve plan sponsors' reporting and submitting of information, in preparation for implementing the January 1, 2014 sunset date.

However, this notice does not limit the requirements in the ERRP regulations at 45

CFR 149.350, which require plan sponsors (and subcontractors, if applicable) to maintain and furnish to the HHS Secretary upon request, certain records enumerated in those regulations. Such records must be maintained for 6 years after the expiration of the plan year in which the costs were incurred, or longer if otherwise required by law. These timeframes set forth in 45 CFR 149.350 continue to apply, notwithstanding the ERRP sunset date or any other dates set forth in this notice.

II. Provisions of this Notice

This notice describes how five operational processes will be impacted by the January 1, 2014 sunset date: (1) reporting changes to information in ERRP applications; (2) reporting change of ownership; (3) submitting reimbursement requests; (4) reporting and submitting corrections to data inaccuracies; and (5) requesting the Secretary to reopen and revise an adverse reimbursement determination. Presented below are the specifics of how these operational processes will be impacted.

A. Date after which plan sponsors no longer must report changes to information in their ERRP applications

The ERRP regulations at 45 CFR 149.35 require a plan sponsor that wishes to participate in the ERRP to submit an application to the Secretary, in the manner and at the time required by the Secretary, as specified in 45 CFR 149.40. The application must contain all the information specified in 45 CFR 149.40 to be approved. Currently, a plan sponsor with an approved application is required to report updates to information contained in its application.¹ CMS expects plan sponsors to update by December 31, 2013, all information that they know is inaccurate. Contact and banking information should be updated in the ERRP Secure Website.

All other application information should be updated by amendment of the paper ERRP

¹ See Common Question 100-8, under the Application tab in the Common Questions section of www.errp.gov.

application. After December 31, 2013, plan sponsors will no longer be required to update information contained in either their paper application or the ERRP Secure Website. Any plan sponsor that is the subject of an active audit as of December 31, 2013, still will be required to keep both CMS and the ERRP Program Integrity Contractor informed of the most current contact information for their Authorized Representative, Account Manager, and any other critical points of contact, until such time that the audit is completed. The plan sponsor must communicate changes to contact information by phone call or email to the ERRP Contact Center and ERRP Program Integrity Contractor.

B. Date after which plan sponsors no longer must report change of ownership

The ERRP regulations at 45 CFR 149.700 define change of ownership, and require plan sponsors that are considering or negotiating a change of ownership to notify the Secretary at least 60 days before the anticipated effective date of the change. In preparation for the ERRP sunset date, a plan sponsor need not notify the Secretary of any such change of ownership in instances where the anticipated effective date of the change would occur after December 31, 2013.

C. Last date plan sponsors may submit reimbursement requests

The ERRP regulations at 45 CFR 149.300 state: “Reimbursement under this program is conditioned upon the provision of accurate information by the plan sponsor or its designee. The information must be submitted, in a form and manner and at the times provided in this subpart and other guidance specified by the Secretary.” In various guidance documents published on www.errp.gov, CMS specified the form, manner, and times for submitting reimbursement requests. As part of ending the program, we are planning for the ERRP Secure Website to eventually be taken offline and archived, and to conclude the remaining operational processes. In preparation for the ERRP sunset date, the last day upon which a

plan sponsor may submit an ERRP reimbursement request is July 31, 2013.² This termination date will allow for a phase down of ERRP operational processes related to the ERRP Secure Website.

D. Date after which plan sponsors are no longer required to submit corrections to data inaccuracies

The ERRP regulations at 45 CFR 149.600 state: “A sponsor is required to disclose any data inaccuracies upon which a reimbursement determination is made, including inaccurate claims data and negotiated price concessions, in a manner and at a time specified by the Secretary in guidance.” CMS specified the form, manner, and times for submitting corrections to data inaccuracies in various guidance documents published on www.errp.gov. The primary guidance document setting forth how plan sponsors must correct data inaccuracies states that plan sponsors must submit a reimbursement request that includes corrected data, no later than the end of the next calendar quarter after the plan sponsor knows, or should know, of the data inaccuracy.³ Because the process for submitting corrections to data inaccuracies leverages the process for submitting reimbursement requests, we have concluded that plan sponsors will no longer be required to submit corrections to data inaccuracies after July 31, 2013, that is, the last day upon which a plan sponsor may submit an ERRP reimbursement request. This means that plan sponsors that know or should know, before or on April 30, 2013, of any data inaccuracy contained in a reimbursement request for a plan year for which a reimbursement determination was made, must submit corrections to the data inaccuracy in a manner consistent with the ERRP

² To meet this deadline, a plan sponsor must take into account the timeframe it may take to submit a new Early Retiree List (if its most recent one has expired), an error-free Claim List, and a Reimbursement Request. A plan sponsor must also take into account the timeframes for CMS to make available to the plan sponsor an Early Retiree List Response File (up to 7 business days), and a Claim List Response File (2-4 calendar days). See all relevant training and guidance materials at www.errp.gov.

³ See Explanation of the Processes for Reporting Early Retiree and Claims Data Inaccuracies, and for Reopening, under the Regulations and Guidance section at www.errp.gov.

regulations and guidance.⁴ A plan sponsor that does not know with certainty its final amount of price concessions for a given plan year, but knows or should know, as of April 30, 2013, of estimates that vary from previously reported price concession amounts for that plan year, must consider those previous amounts to constitute data inaccuracies, and therefore is required to report and correct that data by July 31, 2013.

E. Last day plan sponsors may submit a request to reopen and revise an adverse reimbursement determination

The ERRP regulations at 45 CFR 149.610 permit the Secretary to reopen and revise a reimbursement determination upon the Secretary's own motion or upon the request of a plan sponsor. The regulations, as well as guidance published on www.errp.gov⁵, set forth the process by which a plan sponsor may request a reopening, as well as other information related to reopenings. In preparation for the ERRP sunset date, the last day upon which a plan sponsor may submit an ERRP reopening request is December 31, 2013.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. The information collection requirements associated with the ERRP are currently approved under OMB control number 0938-1087, with an expiration date of September 30, 2014. This document does not impose any new information collection and recordkeeping requirements beyond the

⁴ See footnotes 2 and 3. However, as discussed above, a sponsor that knows or should know, before or on April 30, 2013, of any data inaccuracy contained in a reimbursement request for a plan year for which a reimbursement determination was made, must submit a reimbursement request with corrected data by July 31, 2013, rather than by no later than the end of the next calendar quarter after the sponsor knows or should know of the data inaccuracy.

⁵ See footnote 3.

prior estimates in the supporting statement for the interim final rule, CMS-9995-IFC.

Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

Authority: Sections 1102(a)(l) of the Affordable Care Act (42 U.S.C. §18002(a)(l) and(c)(4)).

Dated: April 16, 2013

Marilyn Tavenner,
Acting Administrator,
Centers for Medicare & Medicaid Services.

BILLING CODE 4120-01-P.

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